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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

ADELAIDE TURNER, Guardian of LYDA LOUISE BELL,
Petitioner

vs.

THERON O. BELL, ET AL,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

TO THE HONORABLE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Adelaide Turner, on behalf of her ward, Lyda Louise Bell, a non compos mentis, respectfully prays for a writ of certiorari to be issued from this Honorable Court to the Supreme Court of Tennessee.

JURISDICTION

The opinion of the Supreme Court of Tennessee involved is reported in 279 SW 2nd, page 71; and is copied in the Record at page 213 The opinion was rendered and entered March 11, 1955. Petition for a rehearing filed by

your petitioner was was denied by the Supreme Court of Tennessee, on May 6, 1955. R. 252

Petitioner thinks that U. S. Fed. Code Ann., Sec. 1257 (3), U.S.C. Ann., confers jurisdiction on this Court.

The federal question was first raised in the petition for rehearing, as it first became evident in the opinion of the Supreme Court of Tennessee.

The constitutional provision involved is the Fourteenth Amendment, U. S. Constitution, especially that portion which provides,

> "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law."

The violative Tennessee law is found in Williams Tennessee Code, Section 8445, which reads:

> "Relief by annulling marriage or decreeing separation or other decree. But if the Court be of the opinion that the complainant is entitled to relief, it may be granted, according to the prayer of the bill, by annulling the marriage, or by ordering a separation, perpetual or temporary, or such other decree as the nature and circumstances of the case require."

and in the interpretation of this statute in the Tennessee case of Ligner vs. Ligner, 165 Tenn. 525, wherein it is said:

> "There could have been no point in empowering the Court to render such other decree as the nature and circumstances of the case require if the relief which the Court might grant was intended to be limited by the prayer of the bill."

"Since but one of two things can be done and the Court is authorized to do the thing that the circumstances of the case require, the statute must mean that the Court can do either thing whether according to the prayer or not."

and in the application and use of the above statute and the holding in Ligner vs. Ligner, in the instant case, as quoted from the opinion thus:

"Under this statute it has been held and is now the law in Tennessee that an absolute divorce may be granted to a party seeking only a separation from bed and board and that an absolute divorce may be granted over the active opposition of such party, Ligner vs. Ligner, 165 Tenn. 525."

OTHER PERTINENT STATUTES OF TENNESSEE

Other statutes of Tennessee which are pertinent to the instant question are:

"Williams Tenn. Code 8427: The following shall be causes of divorce from bed and board; or from the bonds of matrimony, in the discretion of the court:

(1)) That the husband or wife is guilty of such cruel and inhuman treatment or conduct towards the spouse as renders cohabitation unsafe and improper, and, in the case of the wife, to be under the dominion and control of the husband.

(3) That he has abandoned her, or turned her out of doors, and refused or neglected to provide for her."

"Williams Tenn. Code 8431: The bill or petition shall be verified by an affidavit, upon oath or affirmation, before a justice of the peace, notary public, or the judge or clerk of the court, that the facts stated in the bill are true to the best of the complainant's knowledge

and belief, and that the complaint is not made out of levity, or by collusion with the defendant, but in sincerity and truth, for the causes mentioned in the bill."

STATEMENT OF THE CASE

The original bill, in the instant case, was dismissed on demurrers interposed by the defendants, which demurrers were upheld by the Tennessee Supreme Court in the opinion. The bill was filed by the guardian of Lyda Louise Bell for the purpose of declaring void a divorce decree which had been rendered by the Circuit Court of Shelby County and to recover a widow's right for her in the real estate of her deceased husband, C. A. Bell.

Lyda Louise Bell, and her husband, C. A. Bell, had one child, Adelaide Turner, the guardian of her mother. November 6, 1931, at the instance of C. A. Bell, Lyda Louise Bell was adjudicated to be insane and was committed to the Western State Hospital by order of the County Court of Shelby County, in Cause No. 1169. No question is made of this fact, nor of the further fact that there has never been any procedure for the removal of this disability of insanity, and that Lyda Louise Bell is now and has all the while, been in the status of an adjudicated insane person, a non-compos mentis. The Court's opinion concedes this.

June 26, 1933, C. A. Bell, filed in the Circuit Court of Shelby County, Tennessee, his bill for divorce against Lyda Louise Bell, in Case No. 32968 R. D.; in this bill he does not disclose that she is an adjudicated insane person. Lyda Louise Bell, acting not through her guardian, nor even a next friend, but merely by an attorney, in her own proper name and without a guardian ad litem, filed a cross-bill

which seeks a divorce from bed and board ,and alimony. This cross-bill discloses the adjudication of insanity, which fact is admitted in C. A. Bell's answer to the cross-bill.

In her cross-bill, Lyda Louise Bell makes no prayer for an absolute divorce, but only for a bed and board divorce, and for alimony and support. In her cross-bill, appear two positive statements, which we quote:

> "Cross complainant would show that she never was and is not now willing to divorce cross-defendant, that she has given the best years of her life to him, and desires to remain his wife as is fitting and proper."
>
> "Cross complainant would show that she does not desire an absolute divorce from cross-defendant but does desire provision for her support."

The Circuit Judge, nevertheless, over the objection of Lyda Louise Bell, entered a decree granting to her an absolute divorce. Thereafter, C. A. Bell married Theron O. Bell; no children were born of this union. C. A. Bell died, intestate, May 27, 1953. The instant litigation is over the property of C. A. Bell, as to who is the lawful widow, Lyda Louise Bell or Theron O. Bell.

The adjudication of insanity proceedings, and the divorce proceedings are made parts of the bill, and same are found in the instant record as follows:

Insanity R.....18.....
Divorce R.....36....

The theory of the bill is that Lyda Louise Bell, being an insane person was incompetent to maintain the divorce action, and incompetent to make the required oath under the Tennessee Statute Williams Code 8431; and that the Circuit

Court did not have jurisdiction to grant divorce and its decree of divorce is void ab initio; and that Lyda Louise Bell remained the wife, and is the widow of C. A. Bell.

The opinion of the Tennessee Supreme Court clearly shows that the facts were as claimed in the bill, and that the demurrers raised the questions of law as claimed, and that the oath to support a divorce bill was jurisdictional, and that the majority rule in the several states of the Union was clearly that an insane person could not maintain a divorce bill, nor could a guardian, or any other person maintain such a bill for an insane person; that the insane person could not make the necessary jurisdictional oath, and did not have the necessary personal volition to seek a divorce. Then the learned Supreme Court of Tennessee, speaking through special Judge Ridley, proceeds to show that two states are in the minority, Massachusetts and Alabama; and that the Massachusetts rule is based upon a local statute; and that the Alabama rule is based upon a general statute of that state permitting suits by guardians construed to permit a divorce action.

Then the Tennessee Supreme Court proceeds to find a Tennessee statute to lead Tennessee out of the overwhelming majority rule in the United States, and makes such use of this statute as to bring it in conflict with the Fourteenth Amendment. We now quote the language of the Tennessee Supreme Court.

> "In none of the cases denying to a person adjudged insane the right to sue for a divorce because of lack of the requisite personal volition to seek the same is there any statute quoted such as Section 8445 of Williams Code of 1934, which is as follows:
>
> '8445. Relief by annulling marriage or decreeing separation or other decree.—But if the court

be of the opinion that the complainant is entitled to relief, it may be granted, according to the prayer of the bill, by annulling the marriage, or by ordering a separation, perpetual or temporary, or such other decree as the nature and circumstances of the case require.'

"Under this statute it has been held and is now the law in Tennessee that an absolute divorce may be granted to a party seeking only a separation from bed and board and that an absolute divorce may be granted over the active opposition of such party, Ligner vs. Ligner, 165 Tenn., page 525.

"In every divorce action there is husband, wife and a third party who may be variously designated as the Public, Society, Civilization. At the counsel table representing this Third Party sits the Court. Where there is a conflict between the interests of this third party and that of either of the others the interests of this third party are paramount and the Court will so hold.

"Thus where the Court can supply the requisite personal volition for absolute divorce to a competent person seeking a divorce from bed and board only over the opposition of such person, the Court can supply the requisite volition on behalf of a person adjudged incompetent."

Thus the Tennessee Court has declared the vital necessity of personal volition as a basis for a divorce action. The Court has declared, however, that this volition need not come from the litigant, but can be supplied by the Court itself, even over the objection of the litigant. And therein we say the Tennessee Court has so interpreted and applied its statute, Williams Tenn. Code 8445, as to bring it into direct conflict with the letter and the spirit of the Fourteenth Amendment. And as the Tennessee Court itself holds such was vitally determinative; so that the Federal question

clearly arises, for the first time upon the opinion rendered by the Tennessee Supreme Court.

Petition to Rehear was duly filed in the Tennessee Supreme Court, clearly stating the contention above made, and this petition was denied. The petition appears in the Record, pages 23-33

SPECIFICATION OF ERROR

The Supreme Court of Tennessee erred in denying the petition to rehear duly filed by petitioner, in that this Court, after holding that personal volition was vital in support of an action for divorce, the Court proceeded to hold that by force of a Tennessee Statute, the Court trying the divorce action had the power and the right to supply the necessary volition to support a decree for absolute divorce over the objection of the litigant who did not desire an absolute divorce, and that, thus the trial court could and did supply the necessary volition, lacking in an insane litigant. The statute referred to is Williams Tennessee Code 8445. The statute so interpreted and applied is in direct conflict with the provisions of the Fourteenth Amendment, which read:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law."

The question solved by such application of the Tennessee statute was vital and determinative.

ARGUMENT

Any spouse, however much wronged by the other spouse, has a perfect right to not seek a divorce, and no government could force a divorce upon her or him. That would clearly violate the Fourteenth Amendment.

Now Tennessee has provided for limited divorce in some cases, or upon some grounds. Now does the fact that a litigant has made application for a limited divorce, and is therefore before the Court, enable that Court to force upon this applicant an absolute divorce when such is not wanted? We submit that the Fourteenth Amendment is again violated.

No court could go out and bring before it a wronged spouse and compel that spouse to seek and accept a divorce. The interests of the Public, or Society, might be better served if a divorce was granted, let us say, but the right remains in the wronged spouse to suffer in silence, and not seek any relief.

But the Tennessee Court, in the interpretation of its statute, claims that once a litigant comes into its court seeking limited relief, that a full divorce may be forced upon that litigant. Such equally violates the Fourteenth Amendment.

The proposition applies whether the litigant be competent or insane, but it is accentuated when the litigant is an insane person, and the Divorce Court is claiming the power to supply the whole volition. Certainly the insane person is not subject to any doctrine of Laches or Delay in seeking relief from the action of the Divorce Court.

Ashcraft against the State of Tennessee. 64 Supreme Court 921, 322 U. S. 143. We submit this case as a direct

authority on our instant question in regard to the protection afforded by the Fourteenth Amendment of the United States Constitution. In the Ashcraft case there was involved a confession introduced by the State against Ashcraft on his trial for murder. The Court did not determine the question itself of whether or not the confession was voluntary but left it to the Jury. The Supreme Court of the United States, in reversing the Supreme Court of Tennessee, said that "Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled," and on that basis the Court held that the constitution of the United States was violated. Ashcraft was coerced into an apparent confession. In the instant case the coercion was done by the Court itself in forcing upon the litigant an absolute divorce when the litigant's pleadings expressly stated that she did not want an absolute divorce but wanted to remain the wife of cross-defendant and the choice was hers alone and that of no one else, not even the State, and we submit that the authority of the Ashcraft case rules in the instant cast upon the Federal question involved.

That the United States Supreme Court is concerned over the question of proper jurisdiction is also shown by the case of Andrews v. Andrews, 47 Law Edition U. S. Supreme Court Reports, Page 366, wherein it was stated as follows:

> "As, without reference to the statute of South Dakota and in any event, domicile in that state was essential to give jurisdiction to the courts of such state to render a decree of divorce which would have extraterritorial effect, and as the appearance of one or both of the parties to a divorce proceeding could not suffice to confer jurisdiction over the subject matter, where it was wanting because of the absence of domicile within the state, we conclude that no violation of the due faith and credit clause of the Constitution of the

United States arose from the action of the Supreme judicial court of Massachusetts in obeying the command of the state statute, and refusing to give effect to the decree of divorce in question."

Meyer vs. State of Nebraska. 43 Sup. Court 625 262 U. S. 390. We submit that the right of Lyda Louise Bell to remain married is one of the privileges which this Court had in mind in the case just cited, when it used the following language:

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

The learned Supreme Court of Tennessee, in its opinion denying our petition to rehear, makes this statement, citing authority:

"Divorce is not a privilege or immunity of citizenship, either state or federal. Ferry v. Spokane, P. & S. R. Co., 258 U. S. 314, 42 S. Ct. 358, 66 L.Ed. 635, 20 A.L.R. 1326."

While the authority cited deals with dower rather than divorce, we can agree to the proposition stated, that divorce is not a privilege or immunity of citizenship. But that is not the question involved in the instant matter. The right

of a married person to refrain from seeking a divorce is the exact matter now under discussion, and while it is true that the State has the right to say on what terms a divorce may be had, yet the State has no right to compel anyone to to seek a divorce and the right to remain in a married status rather than seek a divorce is a privilege or immunity of citizenship, we respectfully claim.

The Tennessee Supreme Court then goes on to say, we quote: "No person has a right to a divorce except as that right is granted by statute." We can and do agree to that statement but it is not the question now involved. We are not claiming that Lyda Louise Bell was entitled to a limited divorce if the divorce court in its discretion thought that such a limited divorce should not be granted under the circumstances, but we grant that the divorce court had the right to deny to her a limited divorce, and we thus concede to the divorce court all the power that it may properly claim and that is, to use its discretion and to say whether or not it will grant a limited divorce or would grant only an absolute divorce. That is not the question involved but it is that though Lyda Louise Bell was not entitled to a limited divorce, yet the fundamental right remained in her to refrain from taking an absolute divorce even though she had to go from the court without any relief. We fully concede to the divorce court the power to deny the limited divorce within its discretion but we do claim that this did not vest in that court the power to force upon the litigant an absolute divorce when she did not want the same, and it is right there where the Tennessee divorce court and now the Tennessee Supreme Court have applied a statute so as to take from Lyda Louise Bell a fundamental right which belonged to her and to her alone, to choose whether she would or would not be absolutely divorced from her husband.

Further, the Tennessee Supreme Court argues that it was claimed in her petition for rehearing, that Lyda Louise Bell had sufficient mentality to know that she did not want an absolute divorce and that she had sufficient volition to seek provision for her support. Then the Court argues that if she had that much mentality and volition that she did have sufficient mentality to take the oath to support the cross-bill for divorce and sufficient volition to seek the divorce. There is a vein of error running through this line of argument. It is not contended that Lydia Louise Bell possessed sufficient mentality and sufficient volition to choose not to be absolutely divorced and to seek provision for support. All that the record shows is that pleadings to that effect did exist in the Circuit Court, and that no pleadings existed in that Court seeking other than a limited divorce. It does not follow from this historical fact or record fact that Lyda Louise Bell possessed the mentality or volition when the record clearly shows that she was an adjudicated non-compos mentis, and to argue from such a premise that Lyda Louise Bell possessed mentality from the factual matter stated in the pleadings in the divorce case, is lacking in logic. We say that Lyda Louise Bell lacked the mentality and volition to seek any kind of divorce, limited or otherwise, and that is based upon the adjudication of insanity. The mere existence of pleadings of record does not obviate the adjudication of insanity.

In Ashcraft vs. State of Tennessee, Supra, this Court held that the defendant charged with crime had been coerced into signing a confession which was used against him in the trial, this coercion being done by State's Officers and this court held that a confession so obtained was not volun-

tary and that the rights, privileges and immunities of Ashcraft, under the Fourteenth Amendment, had been violated. In the instant case, Lyda Louise Bell was coerced directly by the court into a divorce status which she did not want and we respectfully submit that her rights as protected by the Fourteenth Amendment have been violated by direct action of the Tennessee courts.

What it boils down to is this, that while no court of Tennessee could go out and bring in a wronged spouse and compel her or him to seek a divorce, yet the Tennessee courts seem to think that if they get a litigant in their courts on a claim for any relief provided by the divorce statutes, that that litigant must remain in court and be subject to the decrees of that court regardless of what the litigant may desire. This is a kind of entrapment which should shock the conscience of any court, and we submit that this Honorable Court should grant the writ of certiorari and reverse the Tennessee Supreme Court, and grant relief as prayed for in the original bill of the petitioner.

WHEREFORE, petitioner respectfully prays that this petition be granted, and that a writ of certiorari issue to the Supreme Court of Tennessee, to bring to this Honorable Court, the record in this cause, so that this Honorable Court may consider the record for errors assigned and appearing; and that this Honorable Court, upon such consideration, grant the relief prayed for in the premises, and reverse the Supreme Court of Tennessee, and the Chancery Court of Shelby County, Tenn., and grant proper relief to petitioner: Petitioner prays for general relief.

This is the first application for a writ of certiorari in this cause.

Respectfully submitted,

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